



## **Sunrise Review: Request for Information from Interested Parties**

LD 1129 “Resolve, Directing the Commissioner of  
Professional and Financial Regulation to Conduct a  
Sunrise Review of Oral Health Care Issues”

**Department of Professional and Financial Regulation  
Office of the Commissioner  
June 21, 2007**

## General Information

### 1. Group or organization you represent (if any):

ME Center for Disease Control, Department of Health & Human Services, Oral Health Program

### 2. Position on proposed legislation. Does this group or organization support or oppose:

- Expanding the scope of practice of dental hygienists by creating a mid-level dental hygienist\* license category (LD 1246):

We are inclined to support measures that would expand the scope of practice of dental hygienists by creating a mid-level dental hygienist. However, we cannot, at this time, extend that support to the specific scope of practice proposed in LD 1246. Our position is that a scope of practice is not appropriately described in statute, but would be better defined in rules; that scope should be established after assessing factors such as, but not necessarily limited to, best practices, education and training standards, quality assurance mechanisms, licensure and continuing education requirements, and so on. Moreover, certain of the specific duties proposed seem to us to involve clinical skills and knowledge that may generally be beyond those of dental hygienists.

In addition, as written, LD 1246 as proposed called for the establishment of a “low-income dental health program,” a label that we cannot support. It suggests that we (Maine) endorse a program of care for low income people that does not provide the same level of care at the same standards that other people can get [it may be true that they don't get it now, but should we institutionalize or codify it?]. It would also have a fiscal impact on MaineCare; although this should not be the determining factor, it needs to be taken into consideration as we move forward. Hygienists in Maine are not presently directly reimbursed by either private insurers or by MaineCare. MaineCare will reimburse for services provided by hygienists practicing with public health supervision status in “public health settings” but reimburses an “entity,” not the individual provider (the billing provider, not the servicing provider). To our knowledge, public health supervision has facilitated an increase in the provision of preventive services, and apparently to those who otherwise would have had great difficulty in obtaining those services, but there have been concerns about follow-up and some about quality of care. We are very supportive of hygienists practicing under public health supervision and we need to continue having their contribution to providing more preventive care to more Maine residents.

- Permitting dental hygienists to practice independently without supervision of a licensed dentist (LD 550):

We do not take a position either in support or opposition on LD 550; we feel that more information about the nature of such a practice status would be needed in order for us to support or oppose. We have concerns about the sufficiency of an infrastructure to support the independent practice of hygiene as well as concerns about financial considerations (3rd party reimbursement), quality assurance mechanisms, and about the description, via rules (as proposed in LD 550) of the scope of practice. In our view, the independent practice of dental hygiene must still have an explicit connection to the practice of dentistry to assure diagnosis, treatment and follow-up of dental and oral conditions – which dentists are trained and qualified to perform.

- Permitting dental graduates of foreign universities to become licensed in Maine pursuant to standards acceptable to the Maine Board of Dental Examiners (LD 1129):

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\* In this sunrise review, “mid-level dental hygienist” means a dental hygienist with an expanded scope of practice similar to the scope of practice proposed in LD 1246.

We are inclined to support measures such as the change proposed by LD 1129 in 32 MRSA in it would facilitate the employment of foreign-trained dentists in federally qualified health centers, in private non-profit dental centers, by other dentists in private practice, and eventually, we might expect, as self-employment as independently practicing dentists. There would be a resulting positive effect on the supply of dentists in the state (which is a matter of concern) and by extension on access to dental services. However, we also have concerns about the standards and processes by which foreign training can be evaluated in order for that training to be “considered satisfactory.” Therefore, we are supportive of the concept or the spirit of LD 1129, and its intent to help minimize barriers to professional licensure in Maine, but we also want to absolutely assure that all practitioners are adequately and appropriately educated and trained, and practice according to the standards of the Maine Dental Practice Act.

- Creating a new licensing board within the Department of Professional and Financial Regulation for denturists and dental hygienists separate from the Board of Dental Examiners (LD 1472):

We do not take a position either in support or opposition on LD 1472; we feel that not only would more information about the relationship of such a Board to the Department be needed in order for us to support or oppose, but that this issue in particular is outside of our purview. However, given that we are specifically concerned with protecting the public’s health and assuring access to appropriate and quality health services, we do question the utility of separating the regulation (and all that might entail relative to licensing and continuing education requirements and the like) of dental professionals who should be functioning together as “team” members as much as possible. There are issues that all of these professions have in common and splitting their regulation between or among different boards may contribute to a piecemeal approach that does not necessarily contribute to the coordination needed for the assurances noted above; neither would it likely be cost-effective, in terms of resources, process or time. In addition, we are not clear whether the report of the Regulatory Fairness Commission is based on a broad enough sample of opinion and experience, particularly relative to dental hygienists; and there are relatively few denturists in the state.

## Evaluation Criteria (32 M.R.S.A. § 60-J)

1. **Data on group proposed for regulation.** Please provide a description of the professional or occupational groups proposed for regulation, including:

Responses to items a, b, and c should be available from other sources, i.e., the professional associations involved, and the numbers of licensees from the Board of Dental Examiners.

- (a) The number of individuals or business entities that would be subject to regulation;
  - (b) The names and addresses of associations, organizations and other groups representing potential licensees; and
  - (c) An estimate of the number of potential licensees in each group.
2. **Specialized skill.** Please describe whether the proposed law changes in the areas of oral health care outlined below require such a specialized skill that the public is not qualified to select a competent individual or entity without assurances that minimum qualifications have been met:

- **a mid-level dental hygienist license category (LD 1246):**

The skills of dental professionals are highly specialized. Our view is that the general public is not qualified to select a competent individual or entity without assurances that minimum qualifications have been met. We rely on licensure by recognized authorities for such assurances. A mid-level hygienist would be a “new” practitioner, for which there are several emerging models in the US and elsewhere. Oral health is increasingly recognized as an integral component of overall health; as the public recognizes this, there need to be assurances that all providers of oral health care have met minimum qualifications and practice according to accepted standards.

- **dental hygienists practicing independently without supervision of a licensed dentist (LD 550):**

Again, the skills of dental professionals are highly specialized, and our view is that the general public is not qualified to select a competent individual or entity without assurances that minimum qualifications have been met. We rely on licensure by recognized authorities for such assurances. Oral health is increasingly recognized as an integral component of overall health; as the public recognizes this, there need to be assurances that all providers of oral health care have met minimum qualifications and practice according to accepted standards.

- **dental graduates of foreign universities becoming licensed in Maine pursuant to standards acceptable to the Maine Board of Dental Examiners (LD 1129):**

Again, the skills of dental professionals are highly specialized, and our view is that the general public is not qualified to select a competent individual or entity without assurances that minimum qualifications have been met. We rely on licensure by recognized authorities for such assurances. Oral health is increasingly recognized as an integral component of overall health; as the public recognizes this, there need to be assurances that all providers of oral health care have met minimum qualifications and practice according to accepted standards.

**3. Threat to public health, safety, or welfare. Please describe:**

- (a) The nature and extent of potential harm to the public, if any, if regulation of the practitioners listed below is not expanded:

- **a mid-level dental hygienist:**

It is clear from discussions at the national level, and during the hearings and work sessions on the bills that are covered by this survey, that there is a growing understanding of the need to expand the dental workforce with the development of a mid-level practitioner. This practitioner, whose scope of practice is yet to be defined (and there may be more than one accepted definition), will be able to provide preventive services and other services yet to be delineated that will serve to maximize the use of the skills that each dental professional can provide; each professional will be able to practice to the maximum level of the skills for which s/he is trained and licensed. This efficient use of our dental health workforce would have clear implications for access to oral health services and ultimately to containing costs related to the provision of those services. We do not see potential harm to the public if there is no provision for mid-level dental hygienists in Maine; but it is likely that the serious problems we presently experience related to access to care and to costs related to delays in obtaining services would be exacerbated.

- **dental hygienists practicing independently without supervision of a licensed dentist:**

We do not see potential harm to the public if dental hygienists in Maine do not practice independently.

- **dental graduates of foreign universities licensed in Maine pursuant to standards acceptable to the Maine Board of Dental Examiners:**

We do not see potential harm to the public if there is no provision for dental graduates of foreign universities to be licensed in Maine. However, as noted above, it is our view that there would be a resulting positive effect on the supply of dentists in the state (which is a matter of concern) and by extension on access to dental services (see section 1, item 2).

- (b) The extent to which there is a threat to the public's health, safety or welfare (*Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against dental hygienists or dental graduates of foreign universities in this State within the past 5 years*).

We are not an agency with which such complaints are filed, and we are not privy to the numbers or nature of such complaints. When such complaints are made to us, unless they are made directly and in writing, they are treated as anecdotal and in all cases are referred to the appropriate agency. We are concerned that without appropriate standards for licensing, education, training, continuing

education, etc., that the probability of threats to the public's health, safety or welfare could increase.

4. **Voluntary and past regulatory efforts.** Please provide a description of the voluntary efforts made by dental hygienists or dental graduates of foreign universities to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

No comment.

5. **Costs and benefits of regulation.** Please describe the extent to which regulation or expanded regulation of the occupations (or proposed occupations) listed below will increase the cost of services provided by those practitioners, and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

- **a mid-level dental hygienist:**

DHHS is not able to comment specifically on potential increases in costs. However, we would note that as above, there would likely be considerations for costs to the State through MaineCare. Overall, we would want to see such a practice status structured to assure against duplication of services, and for appropriate provision of services by appropriate providers to consumers. In that a mid-level dental professional (dental hygienist) would likely be providing preventive services, we would suggest that over the long term since prevention is cost-effective and such services should reduce the volume of more involved and expensive restorative and operative care that is usually associated with lack of preventive care, the overall impact could contribute to reducing or at least containing health care costs. The services provided could well allow more people more timely access to needed dental care and, we would suggest, to earlier, less costly interventions and care. The potential impact is difficult to estimate since there is still limited experience from other states to draw from and because it is unknown how many dental hygienists would pursue status as mid-level providers and how many would need to practice at this level to have an appreciable, measurable impact.

- **dental hygienists practicing independently without supervision of a licensed dentist:**

DHHS is not able to comment specifically on potential increases in costs. To the extent that independent practice would enhance and expand the provision of preventive services, the comment directly above applies here as well. However, there are other considerations related to independent practice without the supervision of a dentist that have been noted in other responses.

- **dental graduates of foreign universities licensed in Maine pursuant to standards acceptable to the Maine Board of Dental Examiners:**

DHHS is not able to comment specifically on potential increases in costs. However, as noted above, it is our view that there would be a resulting positive effect on the supply of dentists in the state (which is a matter of concern) and by extension on access to dental services (see section 1, item 2). This in turn would allow more people more timely access to needed dental care and, we would suggest, to earlier, less costly interventions and care.

- **a new licensing board within the Department of Professional and Financial Regulation for denturists and dental hygienists separate from the Board of Dental Examiners:**

DHHS is not able to comment specifically on potential increases in costs related to a new licensing board.

6. **Service availability under regulation.** Please describe the extent to which regulation or expanded regulation of the occupations (or proposed occupations) listed below would increase or decrease the availability of oral health services to the public.

- **a mid-level dental hygienist:**

As noted above, it is clear from discussions at the national level, and during the hearings and work sessions on the bills that are covered by this survey, that there is a growing understanding of the

need to expand the dental workforce with the development of a mid-level practitioner. This practitioner, whose scope of practice is yet to be defined (and there may be more than one accepted definition), will be able to provide preventive services and other services yet to be delineated that will serve to maximize the use of the skills that each dental professional can provide; each professional will be able to practice to the maximum level of the skills for which s/he is trained and licensed. This efficient use of our dental health workforce would have clear implications for increasing access to oral health services and ultimately to containing costs related to the provision of those services.

- **dental hygienists practicing independently without supervision of a licensed dentist:**

The extent to which dental hygienists would choose this status is unknown to DHHS. Therefore, we cannot suggest the extent to which this might increase the availability of services.

- **dental graduates of foreign universities licensed in Maine pursuant to standards acceptable to the Maine Board of Dental Examiners:**

As noted above, it is our view that there would be a resulting positive effect on the supply of dentists in the state (which is a matter of concern) and by extension on access to dental services (see section 1, item 2). This in turn would allow more people more timely access to needed dental care and, we would suggest, to earlier, less costly interventions and care.

- **a new licensing board within the Department of Professional and Financial Regulation for denturists and dental hygienists separate from the Board of Dental Examiners (LD 1472):**

DHHS is not able to comment specifically how a new licensing board might or might not expand the availability of oral health services to the public.

7. **Existing laws and regulations.** Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from non-regulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

It is the view of DHHS that with the information currently available to us, existing legal remedies are adequate to prevent or redress the kinds of harm described.

8. **Method of regulation.** Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

It is our understanding that there have been longstanding issues regarding licensure and regulation between and among these three professions. It is also our understanding that all three of these professions share concerns, as do we, about access to oral health services particularly for lower-income Mainers and children, and about the adequacy of the oral health care workforce. We question, however, whether these alternatives, particularly that of a new licensure board, can address those issues. We would suggest that the shared concerns can best be addressed by the professions working closely together rather than developing their own, separate methods of regulation.

9. **Other states.** Please provide a list of other states that regulate the profession, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on commercial leasing agents in terms of a before-and-after analysis.

This information should be available from other sources, e.g., the professional associations involved. Dental hygienists may practice independently in Colorado, and under certain circumstances (such as in public health settings) in several other states, such as Connecticut and Washington. The language in various states' regulations is not always consistent and further analysis would be helpful.

**10. Previous efforts to regulate.** Please provide the details of any previous efforts in *this State* to implement regulation or expand regulation of the occupations (or proposed occupations) listed below:

- **a mid-level dental hygienist:** none to our knowledge
- **dental hygienists practicing independently without supervision of a licensed dentist:** Legislation was proposed in about 1999 for independent practice. The bill was replaced by a Resolve that directed the Board of Dental Examiners to engage with specified interested parties in consensus based rule-making to further develop and describe Public Health Supervision Status for hygienists.
- **dental graduates of foreign universities:** none to our knowledge
- **a new licensing board within the Department of Professional and Financial Regulation for denturists and dental hygienists separate from the Board of Dental Examiners (LD 1472):** none to our knowledge

**11. Minimal competence.** Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

Standards describing competence for a mid-level dental hygienist would exceed current requirements for licensure for hygienists (as per the Dental Practice Act). Such standards do not currently exist in Maine and should be developed with consideration of the various models being proposed by other states and at the national level, for consistency and congruence – to facilitate reciprocity with other states – and in light of developing best practices.

Our comments above related to licensing dental graduates of foreign universities and to a new, separate licensing board within DPFR also address this item.

**12. Financial analysis.** Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

DHHS does not have the information to respond to this item.

**13. Mandated benefits.** Please describe whether the profession or occupation plans to apply for mandated benefits.

DHHS does not have sufficient information to respond to this item.

Date: August 17, 2007

Completed by:

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